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6 Attorneys for Secured Creditor Westransco, Inc.

7 **UNITED STATES BANKRUPTCY COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

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10 In re:

11 THE SOURCE HOTEL, LLC, a  
12 California limited liability company,

13 Debtor.  
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Case No. 8:21-bk-10525-ES

Chapter 11

**CREDITOR WESTRANSCO, INC.’S  
LIMITED OPPOSITION TO DEBTOR’S  
MOTION FOR ENTRY OF ORDER  
APPROVING SETTLEMENT WITH  
SHADY BIRD LENDING, LLC AND  
GUARANTORS, AS SET FORTH IN  
THAT CERTAIN STIPULATION FOR  
RELIEF FROM THE AUTOMATIC  
STAY AND ANCILLARY RELIEF, AND  
GRANTING RELATED RELIEF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION  
OF LARRY DENKLER IN SUPPORT  
THEREOF**

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28 Hearing:

Date: August 12, 2021

Time: 10:30 a.m.

Place: ZoomGov

Secured Creditor Westransco, Inc. (“Westransco”) hereby submits its limited opposition (the “Opposition”) to Debtor’s “Motion for Entry of Order Approving Settlement with Shady Bird Lending, LLC and Guarantors, as Set Forth in That Certain Stipulation for Relief from the Automatic Stay and Ancillary Relief, And Granting Related Relief” (the “Motion”). In support of

1 the Opposition, Westransco submits the following memorandum of points and authorities, and the  
2 declaration of Larry Denkler, and respectfully represents as follows:

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 Westransco has been providing storage services, both pre and post-petition, for the  
6 Debtor's FF&E (defined below) including various outdoor patio furniture and Fairmont Design  
7 casegoods for furnishing and decorating the 178 guest rooms, suits, and common areas of the  
8 Hotel (defined below). Since October 2019, the Debtor has failed to pay the storage fees and costs  
9 due pre-petition for a total amount of approximately \$212,916.16 which is secured by a warehouse  
10 lien pursuant to section 7209 of California Commercial Code, and it has not paid Westransco any  
11 storage fees and costs due post-petition, while at all times fully cooperating with the Receiver and  
12 other parties by allowing access and inventorying of the FF&E.

13 The Debtor's instant Motion seeks the Court's approval of the settlement entered into  
14 between the Debtor and Shady Bird Lending, LLC ("Shady Bird") and the guarantors of the  
15 Debtor's loan with Shady Bird, Donald Chae and Min Chae, as set forth in that certain Stipulation  
16 for Relief from The Automatic Stay and Ancillary Relief. [Docket No. 190]. To be clear,  
17 Westransco does not oppose the Motion regarding the Debtor's marketing and sale of the Hotel or  
18 the Debtor's consent to Shady Bird's relief from stay. Westransco has been very cooperative with  
19 the Debtor and others in the hope to maximize the value of the Debtor. Westransco files this  
20 limited opposition to preserve its warehouse lien and to avoid Westransco's post-petition  
21 administrative claim from being treated discriminately. Simply put, Westransco needs to be paid  
22 regardless of who eventually controls the Hotel.

23 **II. RELEVANT FACTUAL BACKGROUND**

24 On February 26, 2021 (the "Petition Date"), the Debtor filed a voluntary petition for relief  
25 under Chapter 11 of 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"). Since at least 2014, the  
26 Debtor has been developing a full-service, seven-story hotel with 178 rooms in the City of Buena  
27 Park, County of Orange, State of California (the "Hotel"). Construction of the Hotel began in  
28 2016. The Debtor already purchased flooring and carpeting, lighting, appliances, trade fixtures,

1 furniture, furnishings and equipment (collectively, “FF&E”) which have not been installed to the  
2 Hotel and are stored at Westransco. The Debtor’s primary assets consist of a substantial amount  
3 of FF&E in addition to the Hotel and its leasehold interest in the real property on which the Hotel  
4 is being constructed.

5 Since October 2019, the Debtor has kept storing at least four (4) containers of FF&E in the  
6 warehouses of Westransco, a full logistics company based out of Anaheim, California which  
7 provides transportation, installation, warehouse, liquidation, and logistics services. Specifically,  
8 Westransco received and stored in its local warehouses located in Corona and Buena Park all new  
9 FF&E items for guest rooms, common areas including a lobby, a dining area, meeting rooms, a  
10 pre-function area, a fitness center, a lounge, and Buffet/bar to be installed in the Hotel. The FF&E  
11 items included case goods, upholstery, chairs, tables, consoles, benches, TVs and wall mounts,  
12 artwork and mirrors. To date, all of the FF&E are currently stored in Westransco’s warehouses.

13 The Debtor has failed to pay the storage fees and costs due for the period from October  
14 2019 to the Petition Date in a total amount of approximately \$212,916.16, and these due fees and  
15 costs are secured by a warehouse lien pursuant to section 7209 of California Commercial Code.  
16 Accordingly, on June 18, 2021, Westransco filed a Proof of Claim #10-1 to reflect the same.  
17 Furthermore, the Debtor has continued to store the FF&E in the warehouses of Westransco post-  
18 petition but has not been paying the storage fees and costs becoming naturally due post-petition.

19 On August 12, 2021, the Debtor filed the instant Motion seeking the Court’s approval of  
20 the settlement entered into between the Debtor and Shady Bird and the guarantors of the Debtor’s  
21 loan with Shady Bird, Donald Chae and Min Chae, as set forth in that certain Stipulation for Relief  
22 from The Automatic Stay and Ancillary Relief (together with the related agreements attached  
23 thereto, the “Stipulation”) [Docket No. 190]. Essentially, the Stipulation provides for a consensual  
24 marketing and sale process for the Debtor’s Hotel with Shady Bird having a right to credit bid its  
25 full claim in connection with any sale of the Hotel. If the Debtor’s effort to sell the Hotel is  
26 unsuccessful, Shady Bird will be entitled to relief from stay to conduct a non-judicial foreclosure  
27 sale.

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1           The Debtor also seeks the Court's approval of an access agreement (the "Access  
2 Agreement") dated June 30, 2021 entered into by the Debtor, Shady Bird, M+D Properties, and  
3 Greenland Construction Services, LLC (the "Consenting Parties") as a part of the Stipulation. See  
4 the Motion, Exhibit 1. Section 2 of the Access Agreement specifically provides that the  
5 Consenting Parties consent to Shady Bird having reasonable access to view the FF&E and  
6 equipment for the Hotel located in storage at Westransco in Corona and at Fairmont Designs in  
7 Buena Park.

8           To be clear, Westransco does not oppose to the Motion regarding the Debtor's marketing  
9 and sale of the Hotel or the Debtor's consent to Shady Bird's relief from stay. Westransco has  
10 been very cooperative with the Debtor in the hope to maximize the value of the Debtor.  
11 Westransco files this limited opposition to preserve its warehouse lien and to make certain  
12 Westransco's post-petition administrative claim is paid.

13 **III. WESTRANSCO'S PRE-PETITION SECURED CLAIM**

14           Pursuant to section 7209 of California Commercial Code, a warehouse has a warehouse  
15 lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the  
16 proceeds thereof in its possession. See Cal. Com. Code § 7209(a). Section 7209(e) also provides  
17 that a warehouse "loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to  
18 deliver." See Cal. Com. Code § 7209(e).

19           The Stipulation raises a concern to Westransco that the access of the Debtor or Shady Bird  
20 to the FF&E stored in Westransco's warehouses may be construed as Westransco's voluntary  
21 delivery, and as a consequence, Westransco may lose its warehouse lien. Westransco only  
22 opposes to the Motion to the extent if approving the Stipulation and the Access Agreement could  
23 result in Westransco's losing its warehouse lien against the FF&E stored in its warehouses.  
24 Westransco holds the position that the access of the Debtor or Shady Bird to the FF&E stored in  
25 Westransco's warehouses per the Stipulation and the Access Agreement should not affect the  
26 validity and priority of its warehouse lien in any way if the Motion is granted.

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1           **IV. WESTRANSCO'S POST-PETITION ADMINISTRATIVE CLAIM**

2           Bankruptcy Code § 503(a) and (b) allow parties to request, and the court to grant,  
3 administrative priority status to a number of different types fees and expenses which are generally  
4 associated with the protection, preservation and enhancement of the bankruptcy estate. More  
5 particularly, Bankruptcy Code § 503(a) and (b) provide, in part, that:

6           (a) An entity may timely file a request for payment of an administrative expense, or  
7 may tardily file such request if permitted by the Court for cause. (b) After notice  
8 and a hearing, there shall be allowed administrative expenses ..., including (1)(A)  
the actual, necessary costs and expenses of preserving the estate including - (i)  
wages, salaries, and commissions for services rendered after the commencement of  
9 the case; ...

10  
11 11 U.S.C. § 503(a) and (b)(1). Entitlement to an administrative claim requires a showing that the  
12 claim “(1) arose from a transaction with the debtor-in-possession as opposed to the preceding  
13 entity (or, alternatively, that the claimant gave consideration to the debtor-in-possession);  
14 and (2) directly and substantially benefitted the estate.” *In re DAK Indus., Inc.*, 66 F.3d 1091, 1094  
15 (9th Cir. 1995). “Many [] kinds of costs and expenses are [] accepted and recognized as actual and  
16 necessary costs and expenses of preserving the estate entitled to administrative expense status  
17 under section 503(b)(1)(A).” 4 Collier on Bankruptcy P 503.06 (16th 2021). “The actual and  
18 necessary expenditures of the trustee in operating the business of the estate, *for storage of*  
19 *property*, for rent and for other goods and services incidental to protecting, conserving,  
20 maintaining and rehabilitating the estate are certainly contemplated within the phrase “actual,  
21 necessary costs and expenses of preserving the estate.” *Id.* (emphasis added).

22           Since the Petition Date Westransco has been providing storage services for the Debtor and  
23 has directly conveyed substantial benefit to the estate. In Westransco’s warehouses the Debtor  
24 stored a significant amount of FF&E including various outdoor patio furniture and casegoods for  
25 furnishing and decorating the 178 guest rooms, suits, and common areas of the Hotel.  
26 Westransco’s storage services have conveyed substantial and actual benefit to the estate through  
27 inventorying and preserving the FF&E for the Debtor. Thus, Westransco’s storage fees are actual  
28 and necessary costs of preserving the estate and should be entitled to administrative expense status

1 under § 503(b)(1)(A).

2       Further, the storage fees and costs are incurred in the Debtor's normal course of operation.  
3 A debtor in bankruptcy is still obligated to pay all post-petition expenses incurred in its normal  
4 course of business or when they naturally come due. However, the Debtor has not been paying  
5 Westransco any storage fees that naturally come due post-petition. Pending the sale of the Hotel  
6 and the FF&E, the Debtor should pay all the storage fees and costs coming due until the FF&E  
7 stored in Westransco's warehouses are removed.

8       According to the Stipulation, Shady Bird consents to the Debtor's employment of NAI as  
9 the Debtor's real estate broker as approved by the Bankruptcy Court in the NAI Employment  
10 Order and upon the terms and conditions set forth in the Listing Agreement attached to the NAI  
11 Application. Pursuant to § 507(a)(2) and § 503(b), Westransco's administrative claim for its  
12 storage fees and costs incurred post-petition has the same priority status with the compensation for  
13 NAI as well as other professional of the estate. Thus, Westransco opposes the Motion to the  
14 extent that the Stipulation may have the legal effect to create a carve out or a favorable treatment  
15 for the NAI's compensation and to discriminate against Westransco's administrative claim.  
16 Westransco respectfully requests the Court to order the Debtor to treat Westransco's  
17 administrative claim in the same manner with other administrative claims including compensation  
18 for any professional person employed under §§ 327 or 1103.

19       Westransco is cognizant that Debtor has limited funds at this time and would have  
20 otherwise sought allowance and payment of an administrative expense sooner. However, upon the  
21 filing of the Motion, Westransco is compelled to make clear it is entitled to payment of its pre and  
22 post-petition claim. Again, it is hoped and anticipated that all parties will reach a fair resolution  
23 on this issue.

24       **V. CONCLUSION**

25       Based on the foregoing analysis, creditor Westransco respectfully requests the Court  
26 order that (1) granting the Motion will not affect the validity of Westransco's warehouse lien, (2)  
27 the Debtor should pay Westransco's storage fees and costs that naturally come due pending the  
28 sale the Hotel and the FF&E until the FF&E stored in Westransco's warehouses are removed,

1 and (3) Westransco's administrative claim should be treated in the same manner with other  
2 administrative claims including compensation for any professional person employed under §§  
3 327 or 1103.

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5 DATED: July 29, 2021

**GOE FORSYTHE & HODGES LLP**

6 By: /s/ Robert P. Goe

7 Robert P. Goe,  
8 Attorneys for Westransco, Inc.

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## **DECLARATION OF LARRY DENKLER**

I, Larry Denkler, hereby declare as follows:

1. I am the Senior Vice President of Westransco, Inc. (“Westransco”), which is a secured creditor of the Source Hotel, LLC, a California limited liability company and the debtor and debtor-in-possession herein (the “Debtor”). I am familiar with the business operations of Westransco and the transactions concerning the FF&E storage between Westransco and the Debtor. I have personal knowledge of the facts set forth below, and if called to testify, I would and could competently testify thereto.

2. I make this declaration in support of that certain *Limited Opposition to Debtor's Motion for Entry of Order Approving Settlement with Shady Bird Lending, LLC and Guarantors, as Set Forth in That Certain Stipulation for Relief from the Automatic Stay and Ancillary Relief, and Granting Related Relief* ("Opposition"), to which this declaration is attached. All capitalized terms not specifically defined herein shall have the meanings ascribed to them in the Opposition.

3. Westransco is a full logistics company based out of Anaheim, California which provides transportation, installation, warehouse, liquidation, and logistics services.

4. Since October 2019, the Debtor has continued storing at least four (4) containers of FF&E in the warehouses of Westransco.

5. Specifically, Westransco received and stored in its local warehouses located in Corona and Buena Park all new FF&E items for guest rooms, common areas including a lobby, a dining area, meeting rooms, a pre-function area, a fitness center, a lounge, and Buffet/bar to be installed in the Hotel.

6. The FF&E items included flooring and carpeting, lighting, appliances, trade fixtures, furniture, furnishings and equipment, for instance, case goods, upholstery, chairs, tables, consoles, benches, TVs and wall mounts, artwork and mirrors, which were already purchased by the Debtor but have not been installed to the Hotel. All of these FF&E items are still storing in Westransco's warehouse.

7. The Debtor has failed to pay the storage fees and costs due for the period from October 2019 to the Petition Date in a total amount of approximately \$212,916.16, and these due

1 fees and costs are secured by a warehouse lien pursuant to section 7209 of California Commercial  
2 Code. Accordingly, on June 18, 2021, Westransco filed a Proof of Claim #10-1 to reflect the  
3 same.

4       8.      The Debtor has continued to store the FF&E in the warehouses of Westransco  
5 post-petition but has not been paying the storage fees and costs becoming naturally due post-  
6 petition.

7           9.       Westransco has and will continue to cooperate with all parties in this case, and  
8 simply wants to ensure that it is paid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

11 Executed July 21, 2021, at Corona (city), California.

  
Larry Denkler

GOE FORSYTHE & HODGES LLP  
18101 Von Karman Avenue  
Suite 1200  
Irvine, CA 92612

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 18101 Von Karman Avenue, Suite 1200, Irvine, CA 92612

A true and correct copy of the foregoing document entitled (*specify*): **CREDITOR WESTRANSCO, INC.'S LIMITED OPPOSITION TO DEBTOR'S MOTION FOR ENTRY OF ORDER APPROVING SETTLEMENT WITH SHADY BIRD LENDING, LLC AND GUARANTORS, AS SET FORTH IN THAT CERTAIN STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY AND ANCILLARY RELIEF, AND GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF LARRY DENKLER IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) July 29, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) July 29, 2021, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows: Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Levene, Neale, Bender, Yoo & Brill L.L.P.  
10250 Constellation Blvd., Suite 1700  
Los Angeles, CA 90067

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:**

(*state the method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) July 29, 2021, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows: Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Erithe Smith, USBC, 411 West Fourth Street, Santa Ana, CA 92701  
(document delivery suspended due to COVID-19 protocols)

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 29, 2021  
*Date*

Susan C. Stein  
*Printed Name*

/s/Susan C. Stein  
*Signature*

1  
2 **Mailing Information for Case 8:21-bk-10525-ES**

3 **Electronic Mail Notice List**

4 The following is the list of parties who are currently on the list to receive email notice/service for this case.

- 5 • **Ron Bender** rb@lnbyb.com
- 6 • **Christopher G. Cardinale** ccardinale@agclawfirm.com, mgonzalez@agclawfirm.com
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